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EXAMINER

MACARTHUR, VICTOR L

ART UNIT PAPER NUMBER

3679

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/600,379  
Filing Date: June 20, 2003  
Appellant(s): TAYLOR, STEVE B.

**MAILED**

JUL 1<sup>9</sup> 2006

**GROUP 1700**

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Ray R. Regan  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 5/04/2006 appealing from the Office action  
mailed 8/23/2005.

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**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,697,320	Murray	12-1997
5,704,749	Landgrebe	1-1998
1,257,536	Schroeder	2-1918

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

#### ***Means Plus Function***

The means plus function limitation “Means for mounting” (line 4 of claim 1 and elsewhere) must be interpreted as broadly as the phrase itself allows since the appellant’s specification, prosecution history remarks, and claims describe the phrase so broadly as to encompass any and all structure, material or acts for performing the claimed function (i.e. “mounting”) as follows:

In the specification,

- Two different structural **EXAMPLES** for the “means for mounting” are given: one in which the means is a plurality of bores 24a-d (amendment to spec. filed 6/21/2005, p.7, ll.5-25); and another example in which ball washer assemblies are used (spec. p.4, ll.1-2) as the “means for mounting” (emphasis added). Since the two disclosed embodiments are merely exemplary (rather than scope limiting definitions); and further since the two embodiments differ so greatly in structure (rather than show some common direction for claim interpretation), no conclusion can be made as to what precisely is to be meant by the “means for mounting” other than what the phrase itself conveys (i.e., any structure capable of mounting).
- It is clearly stated (Specification, p.4, l.28 – p.5, l.9) that the embodiment examples described in the Specification are not meant to be limiting to the claims.

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- It is clearly stated (Specification, p.9, ll.17-25) that the drawing figures 1-13 show only one of the many possible embodiments of the invention such that they are not limiting of the claims.

In the prosecution history remarks:

- The appellant agrees with the examiner's assertion that the "means for mounting" can include means for mounting that are not one or more ball washers. (Appeal Brief filed 5/4/2006, p.35, ll.20-23).

In the claims:

- The means plus function limitation "means for mounting" is modified by sufficient structure and material to perform the function. For instance, line 2 of claim 11 states "the mounting means is a plurality of ball washer assemblies"; line 3 of claim 11 states that the means for mounting is "formed in the base"; lines 1-2 of claim 13 state that the "mounting means includes a bore formed in the base"; lines 1-2 of claim 14 state that "the mounting means includes a recess formed in one end of the bore. Accordingly, 35 U.S.C. 112 6<sup>th</sup> cannot be invoked until the claims have been amended to remove the above-mentioned modifying structure. See MPEP § 2181 (I) which states (Rev.3, Aug 2005, p.2100-231, left column, ll.32-37) "Thus, if the phrase 'means for' or 'step for' is modified by sufficient structure, material or acts for achieving the specified function, the USPTO will not apply 35 U.S.C. 112, sixth paragraph, until such modifying language is deleted from the claim limitation."
- Two different structural EXAMPLES for the "means for mounting" are given: one in which the means is a plurality of bores 24a-d (claims 13-16); and another example in

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which ball washer assemblies are used (claims 6-9) as the “means for mounting”.

Since the two claimed embodiments differ so greatly in structure (rather than show some common direction for claim interpretation), no conclusion can be made as to what precisely is to be meant by the “means for mounting” other than what the phrase itself conveys (i.e., any structure capable of mounting).

In Summary, the appellant’s disclosure fails to set forth any clear scope for the limitation “means for mounting” that is any narrower than the claimed term itself. Accordingly, the examiner must read the term broadly enough to encompass any structure capable of mounting. Reading any “merely exemplary” structure into the claims from the appellant’s specification or drawings would be contrary to public policy of granting patents which provide adequate notice to the public as to a claim’s true scope. See MPEP §2184.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 11 is rejected under 35 U.S.C. 112, first paragraph, because the specification as originally filed (note that the amendment to the specification filed on 6/21/2005 was not entered by the examiner since it contained new matter), while being enabling for mounting means including one or more ball washers assemblies (Specification, p.4, ll.1-2 and p.7, ll.8-9), does not reasonably provide enablement for “a plurality of ball washer assemblies combinable with the mounting means” (line 4 of claim 11). The specification as originally filed does not enable any

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person skilled in the art to which it pertains, or with which it is most nearly connected, to make or use the invention commensurate in scope with these claims. The problem posed by claim 11 is that it requires a plurality of ball washer assemblies that are not the means for mounting (as provided for in the Specification) but rather are combinable with the means for mounting. The Examiner notes that a means for mounting that consists of a plurality of ball washers is only one preferred embodiment (p.7, ll.8-9) such that an equivalent means for mounting that is not one or more ball washers can be used. However, the specification as originally filed does not adequately describe any such equivalent means for mounting much less describe how a plurality of ball washers could be combined with such an equivalent means for mounting.

### *Claim Rejections - 35 USC § 102*

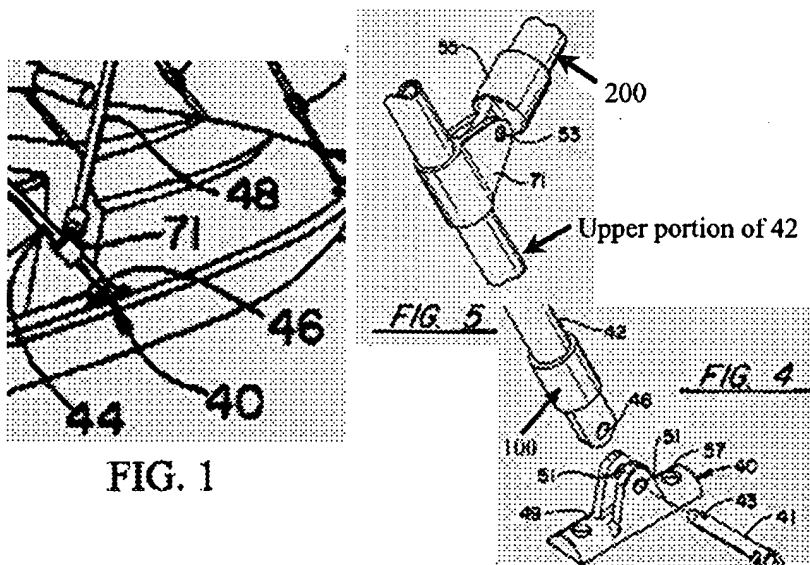
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Murray U.S.

Patent 5697320 (see marked-up figures below).



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Claim 1. Murray discloses (figs. 1, 4, 5) a variably positionable coupler mountable on a curved surface, comprising: a base (40) formed with an upper side and a lower side, wherein the lower side is a substantially flat planar surface; means (57) for mounting the base on the curved surface (curved surface of the watercraft as seen in figure 1); a tub (100) adjustably connectable to the base; a plug [42 (including upper portion of 42) and 71] repositionably attachable to the tub; a neck (55) rotatably insertable in the plug [42 (including upper portion of 42) and 71], wherein the neck is formed for securing a shaft (200) to the neck; and a clevis mechanism (clevis connection between 55 and 71) slidably and demountably engageable with the plug and the neck. (Note that while the Murray curved surface does not curve at its point of contact with element 40, it does curve elsewhere and is thus a curved surface within the broadest reasonable interpretation of the claim language).

Claim 2. Murray discloses opposing yokes (tab portions of 40 receiving 41) monolithically extending at substantially right angles from the upper side of the base.

Claim 3. Murray discloses one or more bores (51) formed in the base with a proximal end and a distal end, and further wherein the one or more bores are shaped for removable engagement with a bolt (41). The word "bolt" is taken by the Examiner to mean, "a metal rod or pin for fastening objects together" in accordance with Merriam-Webster's Collegiate Dictionary Tenth Edition.



***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murray U.S. Patent 5697320 (see marked-up figures above) in view of Landgrebe U.S. Patent 5704749.

Claim 4. Murray does not disclose a frustoconical recess. Landgrebe teaches (fig.1 and cols.3-4) a frustoconical recess (35, 55) formed adjacent the proximal end of one or more bores (portion of B receiving A), which is beneficial for improving the alignment of a fastener within a bore during assembly (col.4, ll.1-20). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the coupler of Murray to include, frustoconical recesses, as taught by Landgrebe, for the purpose of improving fastener alignment during assembly.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Murray U.S. Patent 5697320 (see marked-up figures above) in view of Landgrebe U.S. Patent 5704749, as applied to claim 4 above, and further in view of Schroeder U.S. Patent 1257536.

Claim 5. Murray discloses that the means for mounting comprises a plurality of holes but does not specify what type of fasteners and washers are used. Murray further suggests (col.2, ll.61-65) adaptation for use on land vehicles but does not detail such adaptation. Schroeder teaches (figs.1 and 2) a means for mounting that includes a ball washer assembly received in a

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concave cup (portion of 4 receiving 8) formed adjacent a distal end of one or more bores (hole portion of 4 receiving 10). Schroeder states (p.2, ll.55-95) that ball washer means for mounting are beneficial for mounting components in the variety of positions found on land vehicles (automobiles). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to adapt the Murray means for mounting to a land vehicle, as suggested by Murray, by including ball washers to be used at each hole of the Murray means for mounting, as taught by Schroeder, for the purpose mounting components in the variety of positions found on land vehicles (automobiles).

Claims 6-13 and 16-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murray U.S. Patent 5697320 (see marked-up figures above) in view of Schroeder U.S. Patent 1257536.

Claim 6. Murray discloses that the means for mounting comprises a plurality of holes but does not specify what type of fasteners and washers are used. Murray further suggests (col.2, ll.61-65) adaptation for use on land vehicles but does not detail such adaptation. Schroeder teaches (figs.1 and 2) a means for mounting that includes a ball washer assembly received in a concave cup (portion of 4 receiving 8) formed adjacent a distal end of one or more bores (hole portion of 4 receiving 10). Schroeder states (p.2, ll.55-95) that ball washer means for mounting are beneficial for mounting components in the variety of positions found on land vehicles (automobiles). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to adapt the Murray means for mounting to a land vehicle, as suggested by Murray, by including ball washers to be used at each hole of the Murray means for

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mounting, as taught by Schroeder, for the purpose mounting components in the variety of positions found on land vehicles (automobiles).

Claim 7. Murray as modified by Schroeder suggests that the plurality (Murray) of ball washer (Schroeder) assemblies includes a second threaded bolt (Schroeder, 10) formed with a first diameter.

Claim 8. Murray as modified by Schroeder suggests that the plurality of ball washer assemblies includes a ball washer (Schroeder, 8).

Claim 9. Schroeder teaches that the ball washer is formed with a substantially hemispherical exterior surface (top of 8), an interior surface (bottom of 8), and a duct (hole within 8) between the substantially hemispherical exterior surface and the interior surface formed with a second diameter larger than the first diameter of the second threaded bolt.

Claim 10. Schroeder teaches a nut assembly (15).

Claim 11. Murray discloses a coupler system, comprising: a base (40) formed with opposing yokes (yoke portions of 40 receiving 41); means (57) formed in the base for mounting the base on a curved surface; a boom-swivel device (42, 71, 55) detachably fixable to the base for securing a shaft (200) to the coupler system. Murray discloses that the means for mounting comprises a plurality of holes but does not specify what type of fasteners and washers are used. Murray further suggests (col.2, ll.61-65) adaptation for use on land vehicles but does not detail such adaptation. Schroeder teaches (figs.1 and 2) a means for mounting that includes a ball washer assembly received in a concave cup (portion of 4 receiving 8) formed adjacent a distal end of one or more bores (hole portion of 4 receiving 10). Schroeder states (p.2, ll.55-95) that ball washer means for mounting are beneficial for mounting components in the variety of

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positions found on land vehicles (automobiles). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to adapt the Murray means for mounting to a land vehicle, as suggested by Murray, by including ball washers to be used at each hole of the Murray means for mounting, as taught by Schroeder, for the purpose mounting components in the variety of positions found on land vehicles (automobiles).

Claim 12. Murray discloses that the opposing yokes are formed with opposing apertures (51).

Claim 13. Murray discloses that the mounting means includes a bore (57) formed in the base.

Claim 16. Murray as modified by Schroeder suggests that the plurality (Murray) of ball washer (Schroeder) assemblies includes a bolt (Schroeder, 10) formed with a first diameter.

Claim 17. Murray as modified by Schroeder suggests that the plurality of ball washer assemblies includes a ball washer (Schroeder, 8) formed with a duct (9) having a second diameter larger than the first diameter of the bolt.

Claim 18. Murray as modified by Schroeder suggests that the plurality of ball washer assemblies includes a nut assembly (15).

Claim 19. Murray discloses that the boom-swivel device includes at least one tub (100) adjustably connectable to the opposing yokes.

Claim 20. Murray discloses that the boom-swivel device includes a plug (42, 71) repositionably attachable to the tub.

Claim 21. Murray discloses that the boom-swivel device includes a neck (55) for supporting a shaft (200) rotatably insertable in the plug.

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Claim 22. Murray discloses that the boom-swivel device includes a clevis mechanism (clevis between 55 and 71) engageable with the plug and the neck.

Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murray U.S. Patent 5697320 (see marked-up figures above) in view of Schroeder U.S. Patent 1257536, as applied to claim 13 above, and further in view of Landgrebe U.S. Patent 5704749.

Claim 14. Murray does not disclose a recess. Landgrebe teaches (fig.1 and cols.3-4) a recess (55) formed in one end of a bore (portion of B receiving A), which is beneficial for improving the alignment of a fastener within a bore during assembly (col.4, ll.1-20). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the coupler of Murray to include, a recess, as taught by Landgrebe, for the purpose of improving fastener alignment during assembly.

Claim 15. Schroeder teaches a mounting means that includes a cup (portion of 4 receiving 8) formed in the other end of a bore (5) for supporting the ball washer.

**(10) Response to Argument**

The Appellant argues that the claims are allowable since the MPEP §2111.01 recitation "...claims must be given their broadest reasonable interpretation consistent with the specification" requires that the examiner apply art that shows any exemplary structure described in the specification as being capable of corresponding to the claim limitations. This is not persuasive. The specification should be a full description of the appellant's invention while the claims are meant to specifically point out the aspects of the appellant's invention for which protection is being sought. The appellant's specification fails to properly invoke 112 6<sup>th</sup> paragraph (see examiner's means plus function section above) or set forth any special definitions for claim terms. Accordingly, subject matter that is not recited in the claims cannot be argued as a basis for patentability since any resulting patent would enjoy the entire breadth of scope set forth by the claims. The appellant's burden of obtaining a patent must be met while setting forth claims that define a scope that is equal to the protection being sought. Reading any "merely exemplary" structure into the claims from the appellant's specification or drawings would be contrary to public policy of granting patents which provide adequate notice to the public as to a claim's true scope. See MPEP §2184.

The Appellant argues that the Murray coupler is not variably positionable since tub 100 allows leg 42 to be positionable in one plane only and does not conform to the appellant's specification (p.2, ll.8-26) and drawings. This is not persuasive. First, the question of whether or not these positions are in a single plane, or not, is irrelevant since no limitation requiring "more than one plane" is recited in the claims. Note that elements that are variably positionable

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in a single plane (i.e., for rotation) are still “variably positionable”. Secondly, the Murray coupler is “variably positionable” in that it is capable of being positioned in a variety of configurations and positions within multiple planes (i.e., by rotating 42 about its central axis, and/or pivoting 100 about 43, and/or mounting 40 in different positions, etc.) The recited passage of the specification does not set forth any special definition for the limitation “variably positionable” but rather recites exemplary uses for the appellant’s variably positionable coupler. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The claims must be interpreted as broadly as their terms reasonably allow. This means that the words of the claim must be given their plain meaning unless appellant has provided a clear and deliberate definition in the specification. Exemplification is not an “explicit definition” and even “explicit definitions” can be subject to varying interpretations. *In re Zletz*, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); *Teleflex Inc. v. Ficosa North America Corp.*, 63 USPQ2d 1374, 1381 (Fed. Cir. 2002), *Rexnord Corp. v. Laitram Corp.*, 60 USPQ2d 1851, 1854 (Fed. Cir. 2001), and MPEP 2111,01.

The appellant argues that the Murray coupler is not variably positionable since the Murray coupler does not include a tub, base, ball washer assemblies, or equivalents thereto. This is not persuasive. The appellant does not set forth any special definition for “variably positionable” that requires the above-argued structure. Furthermore, all claimed structure (including the above argued structure) is present in the prior art as detailed in the rejections above.

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The appellant argues that the Murray elements, as referred to by the examiner in the marked-up drawings above, do not read upon that appellant's claims because the elements of figure 4 and figure 5 do not form a connected assembly. This is not persuasive. Note that Figure 5 is a close-up depiction of an area of figure 1 near element 71. Further note that Figure 4 is a close-up depiction of an area of figure 1 near element 40. As clearly shown in figure 1, the element 71 area is directly above and connected to the element 40 area. Thus, the elements of figure 5 are directly above and connected to the elements of figure 4.

The appellant argues that element 100 of the marked-up drawings of Murray cannot be construed to be a tub since it is not described as such in Murray. This is not persuasive. Element 100 of Murray is a tub in that it is hollow and open at one end (i.e., in as much as the appellant's invention is).

The appellant argues that element 42 of Murray is not a plug. This is not persuasive since element 42 of Murray is a plug in that it acts to plug an opening in element 100 (i.e., in as much as the appellant's invention is).

The appellant argues that Murray's element 55 of figure 5 and element 100 of marked-up figure 4 are in fact of identical shape and construction such that they cannot be used to denote both the appellant's neck and tub, respectively. This is not persuasive. Murray's element 55 of figure 5 and element 100 of marked-up figure 4 are separate elements that meet all of the claimed limitations regarding the appellant's neck and tub, respectively. The question of whether or not Murray's neck and tub are of identical shape and construction is irrelevant since the appellant's claims recite no limitation forbidding a neck and tub from having identical structural shape and/or construction.



The appellant argues that the Murray coupler is not “mountable on a curved surface”.

This is not persuasive as follows:

- The Murray coupler is “mountable on a curved surface” in that it presents structure (40) that is fully capable of being mounted on a curved surface by any of various means (e.g. holes 57, bolts, glue, mere placement, straps, etc.).
- Even if the claims were amended to positively recite --mounted on a curved surface-- the Murray watercraft surface as seen in Murray’s figure 1 is curved in as much as the Appellant’s watercraft surface, as seen in Appellant’s figure 14, is curved.
- Mere mounting on a curved surface does not require perfect conformity therewith. Such that the question of whether the appellant’s coupler is more stable on a curved surface than that of the prior art is irrelevant, since no specific limitation regarding degree of stability or conformity is positively recited in the claims. What is relevant is whether the prior art is mountable in some manner, which it clearly is.

The appellant argues that the prior art plug of Murray is not one piece as the appellant’s plug is, as shown in the appellant’s drawings. This is not persuasive, since the appellant’s claims do not recite one-piece construction. The appellant further argues that there is no requirement for one-piece construction to be claimed. This too is unpersuasive. While there is no requirement for the appellant to claim one-piece construction, there is a requirement for the appellant to clearly set forth what aspects of the invention protection is being sought. Therefore, the limitation “tub”, as currently recited in the claims is broad enough to include both

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one-piece and multi-piece tubs. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims, including one-piece homogenous construction. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Furthermore, it appears that element 100 is in fact one-piece.

The appellant argues that there is no motivation to make the rejection of claim 4. This is not persuasive. Motivation for the obviousness rejection of claim 4 comes from Landgrebe who teaches (fig. 1 and col. 4, ll. 1-20) desirability for improving the alignment of a fastener within a bore during assembly as motivation.

The appellant argues that there is no motivation to make the obviousness rejection of claim 5. This is not persuasive. Motivation for said rejection comes from Schroeder who states (p. 2, ll. 55-95) that ball washer means for mounting are beneficial for mounting components in the variety of positions found on land vehicles (automobiles).

The appellant argues that there is no motivation to make the obviousness rejection of claim 11. This is not persuasive. Motivation for said rejection comes from Schroeder who states (p. 2, ll. 55-95) that ball washer means for mounting are beneficial for mounting components in the variety of positions found on land vehicles (automobiles).

The appellant argues that the 112 1<sup>st</sup> rejection is improper since the claim 1 “means for mounting the base on a curved surface” and the claim 11 “means **formed in the base** for mounting the base on a curved surface” do not refer to the same means for mounting (emphasis added). This is not persuasive. Note that modification of a means plus function limitation by sufficient structure (i.e., “formed in the base”) to perform the function does not amount to a proper recitation of a separate and different means plus function. If the appellant intends for the

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claim 11 means plus function limitation to refer to a different means than that of claim 1 then the function portion (i.e., “for mounting the base on a curved surface”) of the claim 11 recitation should be changed such that it differs from that of claim 1. As currently recited, the claim 11 means for mounting is taken to be the same as that of claim 1 and identically described in the specification, thus presenting the proper 112 1<sup>st</sup> rejection above. Also, as noted in the examiner’s “means plus function” section above; modification of a means plus function limitation by sufficient structure to perform the function requires that 112 6<sup>th</sup> paragraph not be applied by the Office. See MPEP § 2181 (I) which states (Rev.3, Aug 2005, p.2100-231, left column, ll.32-37) “Thus, if the phrase ‘means for’ or ‘step for’ is modified by sufficient structure, material or acts for achieving the specified function, the USPTO will not apply 35 U.S.C. 112, sixth paragraph, until such modifying language is deleted from the claim limitation.”

#### **(11) Related Proceeding(s) Appendix**


No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Patent Examiner  
3679



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